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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 CR 561 (LAP)  
11 Civ. 691 (LAP)

5 STEVEN DONZIGER,

6 Defendant.

7  
8  
9 New York, N.Y.  
August 6, 2019  
10 10:00 a.m.

11 Before:

12 HON. LORETTA A. PRESKA,

13 District Judge

14 APPEARANCES

15 FOR THE GOVERNMENT

16 BY: RITA M. GLAVIN

BRIAN P. MALONEY

17 SAREEN ARMANI

SEWARD & KISSEL LLP

18 STEVEN DONZIGER, Pro Se

19 ALSO PRESENT:

20 GEORGE GOLTZER, Advisory Counsel

21 LEAH HARMON, Pretrial Services Officer

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(Case called)

THE COURT: United States against Stephen Donziger.

Is the United States ready

MS. GLAVIN: Yes, your Honor. Rita Glavin for the government, along with my colleagues, Brian Maloney and Sareen Armani.

THE COURT: Good morning.

Is the defendant ready?

MR. DONZIGER: Yes, your Honor.

Good morning. Steven Donziger on behalf of myself.

THE COURT: Good morning.

I note that Pretrial Services Officer Leah Harmon is here. I do not believe she has interviewed Mr. Donziger yet.

Ms. Glavin, how would you like to proceed?

MS. GLAVIN: We would request that this proceed in the ordinary course on initial appearance, which is that there be an interview with pretrial services so we can have better information of conditions of release under 3142.

THE COURT: Any reason not to do that, Mr. Donziger?

MR. DONZIGER: I don't know, respectfully, because I'm not familiar with this procedure. I'm not familiar with this procedure, and I don't know if your Honor got the letter I sent yesterday.

THE COURT: Yes, sir, I did.

MR. DONZIGER: I'm trying to get counsel.

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1 THE COURT: I did, but nevertheless, we have to  
2 proceed with an arraignment in the ordinary course.

3 In fact, as Ms. Glavin said, the ordinary course would  
4 be for the defendant to be interviewed by the pretrial services  
5 officer.

6 I'll ask Ms. Harmon to conduct that interview and to  
7 conclude as quickly as possible.

8 Ms. Harmon, officer, if you're able to, if you can  
9 report orally to help move things along. If you would just  
10 let us know when you're ready to proceed, we'll be ready to  
11 proceed.

12 MS. HARMON: Yes, your Honor. Thank you.

13 THE COURT: If you want to go into the jury room with  
14 Mr. Donziger for privacy, you're welcome to do that.

15 MS. HARMON: Yes, your Honor. That would be helpful.

16 THE COURT: Let us know when you're ready.

17 Thank you. You're both excused. See you in a little  
18 while.

19 (Recess)

20 Government ready?

21 MS. GLAVIN: Yes, your Honor.

22 THE COURT: Thank you.

23 Mr. Donziger, you ready?

24 MR. DONZIGER: Yes, your Honor, with the caveat that I  
25 feel a little uncomfortable not having counsel here, and I'm

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1 wondering if it would make sense to get a federal defender up  
2 here. I don't know where this is heading.

3 THE COURT: All right. Well, we are here. We are  
4 going to hear the recommendation of pretrial, and I note the  
5 presence of CJA counsel under tomorrow, because counsel under  
6 today had a conflict.

7 Mr. Goltzer, thank you for being present

8 MR. GOLTZER: Good morning.

9 MR. DONZIGER: So there is CJA counsel present?

10 THE COURT: There is.

11 MR. DONZIGER: Can I consult with counsel?

12 THE COURT: Well, I'm not holding that you are or are  
13 not entitled to CJA counsel, but should you request counsel,  
14 you fill out and swear to a financial affidavit. I would  
15 consider that application in the ordinary course and rule on  
16 it.

17 Also, I'll remind you that pursuant to 18 U.S.C.  
18 Section 3006(A), that should it appear that any time that you  
19 are not eligible for CJA counsel, you might be required to pay  
20 back the funds that are expended.

21 Do you understand that, sir?

22 MR. DONZIGER: May I be heard on that point?

23 THE COURT: What would you like to be heard on, sir?

24 MR. DONZIGER: Well, I am in a position now where  
25 there is conditions for pretrial being discussed.

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1 THE COURT: Yes, sir.

2 MR. DONZIGER: I need to be represented. I am  
3 unfamiliar with this process. I'm not a criminal defense  
4 lawyer. I'm a pro se litigant, and if the gentleman is here,  
5 maybe you would allow him to talk to me for the limited purpose  
6 today of helping me get me through this process so I'm not  
7 unrepresented.

8 THE COURT: Then I will hand down a CJA financial  
9 affidavit.

10 MR. DONZIGER: I would request, your Honor, that I  
11 could talk to the CJA attorney prior to filling out the  
12 affidavit. This also raises issues. The affidavit -- filling  
13 out the affidavit, just like the interview with -- I forget the  
14 lady's name --

15 THE COURT: With the officer.

16 MR. DONZIGER: -- with the officer also raises issues.  
17 I'm not trying to cause any trouble here.

18 THE COURT: OK. But we are only proceeding in the way  
19 we would proceed in any case.

20 MR. DONZIGER: Well --

21 THE COURT: As you know, maybe you don't know, in the  
22 criminal law, it is the burden of the individual seeking CJA  
23 representation to persuade the court that he or she is entitled  
24 to it. One of the ways we determine that is through the  
25 financial affidavit. Everything is proceeding as it would in

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1 any case, sir.

2 MR. DONZIGER: I understand that, but I think this  
3 case is a little bit different for this reason:

4 I have assets that have virtually been frozen for  
5 various reasons relating to this case. As a result, I could  
6 not retain counsel to come in here today. I came in here on  
7 good faith. I have never missed a court appearance in ten  
8 years. You can ask Judge Kaplan.

9 I am feeling extremely uncomfortable right now that  
10 I am unrepresented. I don't understand this process. I  
11 expected to come in here and argue for a slight delay so I  
12 could get counsel, because there is counsel interested in  
13 representing me pro bono. He is on vacation in Ireland, and he  
14 is my counsel in the RICO case.

15 This isn't a delay tactic. I have interested counsel  
16 who wants to represent me. This is a serious, serious case.  
17 OK. This is criminal. I get it. It is highly serious. I've  
18 been dealing with the civil up to this point. It is now  
19 criminal.

20 My wife is here. I have a kid at home, 13-year-old  
21 kid. I need -- please, I need counsel. Can I please consult  
22 with the gentleman today, swearing the affidavit, just for  
23 purposes of getting through this one proceeding so my rights  
24 can be protected, and then hopefully I'll be able to get real  
25 counsel to come in here? That would make my life a lot easier

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1 and I would hope the court's life a lot easier.

2 I feel very vulnerable right now standing here  
3 unrepresented, completely unfamiliar with this process. I  
4 wrote your Honor a letter yesterday -- I assume you received  
5 it -- where I asked for a two-week postponement so I could  
6 arrange for counsel.

7 I get this is the normal course. This is an  
8 arraignment. I understand that. But the very process of doing  
9 an arraignment is also implicating my liberty interest and my  
10 rights and I am unrepresented.

11 So I would really implore you to make an exception and  
12 allow me to talk to the CJA attorney just for purposes of  
13 getting through this procedure today.

14 THE COURT: Thank you.

15 Does the government have a position?

16 MS. GLAVIN: Your Honor, no objection to Mr. Donziger,  
17 for the simple purpose of consultation with respect to  
18 eligibility for CJA counsel, to consulting with Mr. Goltzer,  
19 who I understand is present in the courtroom.

20 THE COURT: Thank you.

21 Mr. Goltzer, would you attend upon Mr. Donziger,  
22 please?

23 MR. GOLTZER: Yes.

24 May we step out to do that?

25 THE COURT: Yes, sir. You're welcome to use the jury

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1 room, if you so desire.

2 MR. GOLTZER: Thank you so much.

3 MR. DONZIGER: Thank you, your Honor.

4 THE COURT: Yes, sir.

5 (Recess)

6 MR. GOLTZER: Thank you, Judge.

7 THE COURT: Yes, sir.

8 MR. GOLTZER: May I be heard briefly, even though I  
9 haven't been appointed?

10 THE COURT: Yes, sir.

11 MR. GOLTZER: Thank you very much.

12 I've had a chance to confer with Mr. Donziger. Just  
13 to bring the court up to date, Mr. Donziger's advised me that  
14 he has an attorney who is going to be coming in in two weeks to  
15 represent him pro bono. He is prepared today to continue  
16 pro se, but it would be his request that I be permitted -- I  
17 have no objection with the government and the court has no  
18 objection -- to sit at his table to be advisory counsel, which  
19 I'm prepared to do without being appointed, if it please the  
20 court.

21 I advised Mr. Donziger, who is requesting a  
22 re-adjourning of these proceedings by way of arraignment and a  
23 bail hearing, he's asked for a brief continuance.

24 To the extent that the court is not inclined to do  
25 that to permit his counsel of choice to come in, I have advised



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1 Mr. Donziger it would be in his best interest to listen to the  
2 recommendation of pretrial services and to the government's  
3 recommendation with respect to the conditions of release, then  
4 he can have an opportunity to discuss it with advisory counsel  
5 and formulate a response.

6 That's where we are.

7 THE COURT: Thank you.

8 Does the government have a position?

9 MS. GLAVIN: No objection to the proposal by  
10 Mr. Goltzer, your Honor.

11 THE COURT: Very well then.

12 Is there any reason not to proceed with the  
13 arraignment and then to hear the recommendation of the pretrial  
14 services officer?

15 MS. GLAVIN: No, your Honor.

16 MR. GOLTZER: No.

17 THE COURT: Thank you.

18 Mr. Donziger, would you state your name for the  
19 record, please.

20 MR. DONZIGER: Steven R. Donziger.

21 THE COURT: How old are you, sir?

22 THE DEFENDANT: 57.

23 THE COURT: You read, write, speak, and understand  
24 English; is that right?

25 THE DEFENDANT: Yes, ma'am.

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1 THE COURT: How far did you go in school, sir?

2 THE DEFENDANT: JD.

3 THE COURT: Are you currently or have you recently  
4 been under the care of a doctor or a psychiatrist?

5 THE DEFENDANT: No.

6 THE COURT: Have you been hospitalized or treated  
7 recently for alcohol addiction, narcotics addiction, or any  
8 other type of drug abuse?

9 THE DEFENDANT: No.

10 THE COURT: Are you currently under the influence of  
11 any substance, such as alcohol, drugs, or any medication that  
12 might affect your ability to understand what you're doing here  
13 in court today?

14 THE DEFENDANT: No.

15 THE COURT: Thank you.

16 MR. DONZIGER: Your Honor, could I just very quickly.  
17 When the officer interviewed me, I was wanted to just  
18 put down the caveat that the information I gave her was to the  
19 best of my recollection, obviously. She asked me about  
20 liabilities.

21 THE COURT: About?

22 MR. DONZIGER: My liability, my assets and  
23 liabilities.

24 THE COURT: Yes, sir.

25 MR. DONZIGER: I neglected to tell her, I forgot that

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1 I have additional liabilities related to judgments that Chevron  
2 has obtained against me post-trial via Judge Kaplan, and they  
3 total several million dollars.

4 So I just wanted -- I can't give you the exact number.  
5 I've kind of lost track. I just want to make that clear that I  
6 did not give the officer the complete information on that part.

7 THE COURT: All right. Officer, before I hear from  
8 you, if you want an additional opportunity to confer with  
9 Mr. Donziger, you just let me know.

10 MS. HARMON: Yes, your Honor, but I don't think that  
11 will be necessary.

12 THE COURT: Yes, ma'am. Thank you.

13 So, Mr. Donziger, do you understand that you have the  
14 right to have counsel at all stages of the proceedings,  
15 including an appeal?

16 THE DEFENDANT: I do, yes.

17 THE COURT: All right. Again, I'll repeat what I said  
18 earlier. While I am not making a ruling as to whether you are  
19 or are not entitled to CJA counsel, should you request such  
20 counsel and fill out and swear to a financial affidavit, I'll  
21 consider that affidavit in the ordinary course before making a  
22 decision.

23 I'll just advise you again that under the statute,  
24 18, United States Code, Section 3006(A), that if it appears at  
25 any time that you're not entitled to CJA representation, you

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1 might be required to pay back the funds that are expended.

2 Do you understand, sir?

3 THE DEFENDANT: I do.

4 Just to ask you a question, if I may?

5 The presence of Mr. Goltzer today is not -- he's not  
6 here as CJA counsel.

7 THE COURT: Because of Mr. Goltzer's graciousness in  
8 acting as advisory counsel for today.

9 MR. DONZIGER: I just wanted to be sure, my position  
10 is that I expect to get my own counsel of choice and private  
11 counsel and soon, and I think the CJA thing will not be  
12 necessary.

13 However, it is not 100 percent certain that the  
14 private counsel I'm talking to will come in. There are some  
15 issues still to be negotiated. I expect he will.

16 THE COURT: Sir, have you received a copy of the order  
17 to show cause that was signed by Judge Kaplan on July 30?

18 THE DEFENDANT: Yes.

19 THE COURT: Would you like me to read it out loud  
20 now in court, or is it sufficient that you have read it and  
21 reviewed it?

22 THE DEFENDANT: It is insufficient, your Honor.

23 THE COURT: How do you now plead, sir?

24 THE DEFENDANT: Not guilty.

25 THE COURT: Thank you. Won't you be seated.

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1 Counsel, what would you like to do next?

2 Would we like to hear from the pretrial services  
3 officer?

4 MS. GLAVIN: Yes, your Honor.

5 THE COURT: Officer.

6 MS. HARMON: Your Honor, would you prefer that I go  
7 over all the background information and then provide the  
8 recommendation, or just simply the recommendation for bail?

9 THE COURT: I think it would be most efficient if you  
10 would provide the recommendation, and then if anyone has any  
11 followup, we'll go from there.

12 MS. HARMON: Yes, your Honor.

13 It is my recommendation that the defendant be released  
14 on a secured bond by cash or property and also to be cosigned  
15 by one financially responsible person, and released on pretrial  
16 supervision with location monitoring and home detention, a  
17 travel restriction to the Southern and Eastern Districts of  
18 New York, and for him to surrender his passport within 24 hours  
19 and no new application for a passport.

20 THE COURT: When you say his passport, I take it you  
21 mean any passport he has?

22 MS. HARMON: Yes, your Honor.

23 THE COURT: All right. Thank you.

24 What is the government's response, please?

25 MS. GLAVIN: We would ask for one additional cosigner.

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1 So instead of one cosigner by one financially responsible  
2 person, two financially responsible people.

3 THE COURT: Thank you.

4 Mr. Goltzer, do you want to speak, or does  
5 Mr. Donziger wish to speak with respect to the terms of release  
6 that are proposed by the officer?

7 MR. DONZIGER: I would like to speak, but can I  
8 consult with Mr. Goltzer first?

9 THE COURT: Yes, sir.

10 MR. DONZIGER: Can I go back to the jury room real  
11 quick?

12 I'll be just a couple minutes.

13 THE COURT: Sure.

14 (Recess)

15 Gentlemen, before you begin, I forgot to ask you,  
16 Officer, the bond that you're proposing.

17 MS. HARMON: I would say \$800,000, your Honor.

18 THE COURT: Yes, ma'am. Thank you.

19 Gentlemen.

20 MR. GOLTZER: Your Honor, if it is agreeable to the  
21 court, I will speak very briefly.

22 THE COURT: Yes, sir.

23 MR. GOLTZER: And then, of course, Mr. Donziger may  
24 wish to add something with respect to this.

25 We do not believe that a secured bond is necessary.

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1 Mr. Donziger has been coming to this court for a decade. He  
2 has been involved in this particular litigation, which I know  
3 the court is familiar with, for 20 or 25 years. It is still  
4 ongoing.

5 There are matters before the Second Circuit by way of  
6 interlocutory appeal and direct appeal. There is a briefing  
7 schedule. He's been representing himself pro se. If, in fact,  
8 he were to abscond, he would be abandoning his wife and child.  
9 He is a long-time resident of New York and he would be  
10 forfeiting his right, I suspect, to continue with his appellate  
11 litigation, and that would destroy everything that he has been  
12 working for for over 25 years.

13 I would suggest that a substantial bond is  
14 appropriate. He's prepared to sign it, his wife is financially  
15 responsible. He hasn't had an opportunity to discuss the issue  
16 of the bond with her, but based upon the relationship they've  
17 had for so many years, I have no doubt that she would be  
18 willing to sign the bond.

19 As far as the home detention is concerned, I don't  
20 think that is necessary. I know it is a standard condition for  
21 people to be confined to the Southern and Eastern Districts of  
22 New York. I don't expect that is a problem. If counsel do  
23 comes in and wants to have travel authorized, he can certainly,  
24 your Honor, and get pretrial's view of that situation.

25 The passport issue is problematic, because even under

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1 the rulings of the Second Circuit that I've been told about,  
2 Mr. Donziger is permitted to pursue execution of the judgment  
3 in foreign countries. And he has appointments in Canada, for  
4 example. So he would need to travel, if he had the court's  
5 permission to do so.

6 This is, as Mr. Donziger indicated to you, a rather  
7 unusual situation. There is nobody who is suggesting that he  
8 be detained. Certainly there are conditions which are  
9 available to assure that he is going to come back. No one is  
10 suggesting that he is a danger to the community or a risk of  
11 flight under the circumstances that I have laid out, so I think  
12 that asking him to secure an \$800,000 bond, when Exxon has been  
13 engaged -- not Exxon; that's next I guess -- when Chevron has  
14 been engaged in enforcement proceedings over the past 18  
15 months, engaged in extraordinary discovery, and probably knows  
16 more about his assets than he does, it is somewhat unduly  
17 burdensome and unnecessary to ask him to secure it, since most  
18 of his assets by way of bank accounts particularly have been  
19 frozen. I don't think he could be in a position to do that at  
20 this point.

21 But if he ran, I would suspect that he would lose the  
22 right to continue litigating the freezing of those assets and  
23 the validity of the judgments that were imposed by Judge  
24 Kaplan.

25 I appreciate and Mr. Donziger appreciates giving me



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1 the opportunity to speak briefly. I guess I'm advisory  
2 pro bono counsel for the convenience of the court to expedite  
3 the proceeding. I'm happy to do it. Mr. Donziger would like  
4 to be very briefly heard.

5 Thank you, Judge.

6 THE COURT: Thank you.

7 MR. DONZIGER: Thank you, your Honor.

8 Your Honor, a couple points I would like to add.

9 Number one is I have two appeals pending before the  
10 Second Circuit. I don't know if you're aware of that. One is  
11 interlocutory.

12 THE COURT: You attached a brief and one of them to  
13 your letter.

14 MR. DONZIGER: Exactly.

15 There is a second one based on Judge Kaplan's May 23  
16 contempt order. Briefing is due on September 9.

17 To be clear, those issues raised in those briefs deal  
18 with the whole sweep of Judge Kaplan's entire contempt order  
19 was civil and obviously criminal. I get criminal is different.  
20 It would happen anyway, even if I won those appeals and Judge  
21 Kaplan's civil contempt orders were reversed. It is relevant  
22 and I'm briefing exactly the same issues now before the Second  
23 Circuit that Judge Kaplan has used to file this criminal  
24 contempt sanction.

25 The other point I want to make is I don't want you to

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1 get the impression -- although it might be difficult to reverse  
2 any opinion you might have about this -- but I am not mocking  
3 the courts here. I have come here for ten years. I believe in  
4 the court system. I respect the court system. I have resisted  
5 Chevron's efforts to shut this case down through the court  
6 system. That is why I'm here today, obviously, voluntarily.

7 I say that because the idea that I would be confined  
8 by the terms of my travel or confined to my house, I think, is  
9 wholly inappropriate. I intend to contest these charges. I  
10 will show up. I'm going to come with counsel. I'm assuming  
11 that I will get a jury trial. If that is not sort of where  
12 counsel for the government thinks this is heading, I would like  
13 to know that, but I'm assuming I'll get a jury trial.

14 The issue of my passport is directly related to what  
15 I've described in this sentence. When Judge Kaplan ruled that  
16 the Ecuadorian judgment was unenforceable in the United States,  
17 he specifically ruled that it could be enforced in other  
18 jurisdictions. The Second Circuit affirmed that. As a matter  
19 of fact, I was positive that was one of the key factors in the  
20 Second Circuit being comfortable with affirming Judge Kaplan's  
21 judgment, which was, facts aside, very unusual to go after  
22 adversary counsel during an ongoing civil litigation.

23 Lastly, when Judge Kaplan filed his indictment, I was  
24 in Canada. I was in Toronto, where I was having meetings  
25 related to judgment enforcement actions in other jurisdictions.

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1 I have regular appointments that require me to travel to carry  
2 out this aspect of my work that Judge Kaplan said I could do,  
3 the Second Circuit validated, and by the way, the Supreme Court  
4 of Canada also issued a ruling the right to the Ecuadorians to  
5 try to enforce the judgment in that country.

6 So this is legitimate work, and I would ask the court  
7 to at least take that into account when imposing conditions of  
8 release.

9 What I would propose, if I may, is you say normal  
10 course. This is unfamiliar to me, except obviously I'm  
11 learning about it today being here. But what I would propose,  
12 because I don't think this is a normal kind of case, given the  
13 long history of my particular role in this, is to allow me to  
14 keep my passport, for me to propose when I want to travel to  
15 another international place, that I would inform the court or  
16 inform pretrial services or whatever the process is, get  
17 permission to go for a certain period of time, and be allowed  
18 to return.

19 I've probably left this country 150 times since the  
20 RICO judgment was filed. And I recognize that was civil, this  
21 is criminal, but there were criminal allegations in the RICO  
22 judgment. I came every day, several weeks of trial, 19 days of  
23 depositions. So I am a person who shows up.

24 I intend to contest these charges. I don't think I  
25 should be treated like any normal person in the normal course.

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1 I would -- I mean, obviously we can do the bond.

2 Home detention, I would urge you not to impose that.

3 Also, I have a son who is 13 years old who needs his  
4 father, and I want to be able to go places with him around the  
5 city -- basketball, school, that kind of stuff.

6 So I just don't think that is necessary. I don't  
7 think I need to sit in my house all day. I want to be able to  
8 at least go around this area and also be able to travel, as  
9 needed, to other jurisdictions to exercise my right and the  
10 rights of my clients to try to see this case to completion.

11 THE COURT: Thank you.

12 Does the government have a position?

13 MS. GLAVIN: Your Honor, before stating the  
14 government's position, could I have an opportunity to consult  
15 with the pretrial services officer?

16 Because in the normal course, there is a report  
17 generated, and the government, as well as the defense, has an  
18 opportunity to review some of the facts that the defendant  
19 provided. I don't have any of that here, so I would like to  
20 understand a little bit about it.

21 THE COURT: Yes, ma'am. Go ahead.

22 I would just thank the pretrial services officer for  
23 expediting the process this morning.

24 MR. GOLTZER: May I sit in on this discussion?

25 MS. GLAVIN: No objection.

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1 MR. GOLTZER: Thank you.

2 MR. DONZIGER: Your Honor, is there a bottle of water?  
3 I need some.

4 THE COURT: Sure. We can get some water over here.

5 (Recess)

6 Ms. Glavin.

7 MS. GLAVIN: Your Honor, with respect to the three  
8 conditions that the defense objects to, which would be security  
9 on the bond, surrender of the passport, which is a standard  
10 condition in this district, and the standard travel conditions.

11 MR. GOLTZER: Also home detention.

12 MS. GLAVIN: Also home detention, correct. Thank you,  
13 Mr. Goltzer.

14 Look, the case involves six counts of criminal  
15 contempt. While Mr. Donziger has showed up and I see a very  
16 full docket of him showing up and a lot of activity -- and I  
17 think we're now up to 2292 in the entry -- this is now a whole  
18 new ball game. This is not a civil proceeding anymore.

19 We're in a criminal proceeding where Mr. Donziger is  
20 facing jail time. On several of these criminal contempt  
21 counts, specifically the surrender of the passport, the refusal  
22 to turn over devices to a neutral expert solely for the purpose  
23 of imaging, the portion of the order that required turning over  
24 images to Chevron has been stayed pending appeal. It is simply  
25 noncompliance by Mr. Donziger. It is virtually undisputed.

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1           So we're dealing with criminal contempt where I think  
2 the cases are pretty clear, and Mr. Donziger chose to go into  
3 criminal contempt. So from the government's perspective, he is  
4 facing, very likely, jail time in this case, and it is unlike  
5 anything he's gone through before.

6           Then you add to that the fact that he has got  
7 judgments against him totaling -- now it's about \$4 million,  
8 with respect to the attorney fee award, on top of the \$800,000  
9 RICO judgment, and that is not even getting to the coercive  
10 fines that were imposed that Judge Kaplan suspended because  
11 they weren't having any impact on Mr. Donziger. There is money  
12 issues that Mr. Donziger is facing, criminal issues, and likely  
13 prison.

14           And then added to that, your Honor, what I learned  
15 from pretrial services about Mr. Donziger's international  
16 travel, which I understand he travels approximately once a  
17 month to places, not just Canada, but also Ecuador. And the  
18 reason I raise Ecuador is my understanding from a review of the  
19 record is that Mr. Donziger has been to Ecuador at least seven  
20 times in the last two years. Ecuador does not have, I should  
21 say, reliable extradition process with the United States. Even  
22 a quick search by the court about issues with Ecuador and  
23 asylum, if a defendant casts a case in political terms, there  
24 is no assurance that that defendant's coming back.

25           Mr. Donziger has established a lot of ties with

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1 Ecuador, with people very politically active in Ecuador, and a  
2 read -- I know I will be raising this towards the end of the  
3 proceeding, but a read just of his Twitter account and casting  
4 this matter in political terms when, in fact, really what this  
5 proceeding is, in the criminal case, is simply compliance with  
6 court orders. Put aside what the substance of the Chevron case  
7 is. It is just complying and willfully disobeying what the  
8 court has asked Mr. Donziger to do.

9 This has taken a severe turn into a direction that  
10 Mr. Donziger is not, as he admits, familiar with, and an  
11 understandably scary direction. One could argue in many ways  
12 that it is coming to a head here for Mr. Donziger.

13 So having a bond that is secured to assure his  
14 appearance, as necessary, particularly given the severity of  
15 the allegations and his foreign ties, I think, is important.

16 I do think it is important to have someone in addition  
17 to his wife be a cosigner. A financially responsible person  
18 would also be important.

19 With respect to the surrender of his passport,  
20 Mr. Donziger can do what criminal defendants in this district,  
21 most of them, have to do, which is they surrender their  
22 passport. And the degree to which they want to do  
23 international travel, they can submit an application to the  
24 court stating the reasons for the travel, what the plan is, get  
25 it approved or not approved by pretrial services, and if the

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1 court approves it, the passport could be returned for the  
2 limited purpose and then promptly returned when they come back  
3 to the United States. That is the normal course of events for  
4 most, if not all, defendants in this district. So the  
5 passport, at a minimum, should be surrendered as well.

6 With respect to the issue of home detention with  
7 electronic monitoring, I certainly think there should be a GPS  
8 monitor for Mr. Donziger. And I think the home detention  
9 conditions could be worked out with pretrial services such that  
10 to the extent he has some family events that he makes known to  
11 the pretrial services officer, but that he is home after those  
12 events. His travel would be restricted to the Southern and  
13 Eastern District, absent an application to the court.

14 I think that those conditions are standard, they are  
15 not unreasonable, and they are not unduly burdensome. The  
16 purpose of securing the bond is to make sure that he shows up  
17 in what is a vastly different, more serious proceeding that  
18 involves the loss of his liberty.

19 THE COURT: Thank you.

20 Gentlemen, any further comment?

21 MR. DONZIGER: I would like to add a couple comments  
22 in response to Ms. Glavin's argument.

23 The six counts in Judge Kaplan's indictment -- I just  
24 want to be clear where we stand on every one of them. I don't  
25 think they are strong and I respectfully disagree with



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1 Ms. Glavin on that point.

2 The fourth, fifth, and sixth count, your Honor, relate  
3 to transfers of my interest to Chevron. They have been  
4 executed, just so you know. The fourth, fifth, and sixth  
5 counts, I'm in compliance right now.

6 Judge Kaplan is looking back and saying that, for a  
7 certain period of time, I wasn't in compliance. That's the  
8 basis for making a criminal contempt allegation against me when  
9 I'm already in civil compliance. I find that to be very  
10 unusual.

11 With regard to the first count, which is the paragraph  
12 four issue, which is to create a list of devices, he has  
13 referred that -- I believe I'm in compliance with that. He has  
14 referred that to Magistrate Judge --

15 THE COURT: Lehrberger.

16 MR. DONZIGER: -- Lehrberger for proceedings to  
17 determine whether I'm in compliance, yet he files a criminal  
18 contempt charge on something that he himself acknowledges is  
19 still an open issue.

20 With regard to the paragraph five issue, which is my  
21 computer and cell phone, I want to be very clear about  
22 something. OK. The protocol that Judge Kaplan designed is  
23 something that I dispute, because it would essentially allow  
24 Chevron to get everything I have related to the Ecuador case  
25 without regard to any privileges I have or my clients have or

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1 other lawyers in other jurisdictions. I told Judge Kaplan last  
2 October that I wanted to have appellate review of that order.  
3 It implicates deep constitutional rights. I believe it is  
4 unlawful. I know --

5 THE COURT: Mr. Donziger, we are not here today to  
6 discuss whether or not the orders issued by Judge Kaplan --

7 MR. DONZIGER: I agree.

8 THE COURT: -- are correct or not.

9 MR. DONZIGER: I agree.

10 THE COURT: That is not what we're talking about  
11 today.

12 MR. DONZIGER: I'm only saying that because Ms. Glavin  
13 brought that up as something relevant to setting conditions of  
14 pretrial release. All I'm trying to say, obviously this is  
15 very serious. The degree of seriousness to me, I believe --  
16 given the compliance of four of the six counts right now, the  
17 other two I have principal objections to -- does not make me  
18 out to be someone who is just thumbing his nose at courts or  
19 Judge Kaplan. I do not believe that is the case.

20 I did not choose to go into criminal attempt. I have  
21 appeals. She said I chose --

22 THE COURT: We're discussing now the terms of release,  
23 sir.

24 MR. DONZIGER: Thank you, your Honor.

25 THE COURT: Thank you.

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1 Ms. Glavin, anything else?

2 MS. GLAVIN: No, your Honor.

3 THE COURT: Thank you.

4 Counsel, I do agree that this is a new type of  
5 proceeding, and although Mr. Donziger has appeared in the civil  
6 case, we are in a brave new world now. He is facing jail time.  
7 The weight of the evidence seems to be very strong.

8 I acknowledge Mr. Donziger's place in the community  
9 and his community ties, but I'm also quite troubled by  
10 Mr. Donziger's past refusal to comply with orders of the court.

11 I am troubled by the frequent travel to Ecuador which,  
12 as counsel has pointed out, has less than a reliable system for  
13 extradition.

14 I am also concerned that without any security on the  
15 bond, there will be no moral imperative or any financial  
16 imperative to show up.

17 Accordingly, I will require Mr. Donziger to execute a  
18 bond in the amount of \$800,000 to be secured by cash or  
19 property, for the bond to be cosigned by two financially  
20 responsible persons, to impose location monitoring, GPS  
21 monitoring, home detention with, as the government has pointed  
22 out, conditions sufficient to allow Mr. Donziger to take care  
23 of his family relations and family obligations, and to have  
24 lawyer-client meetings.

25 Travel will be restricted to the Southern and Eastern

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1 Districts of New York. In addition, Mr. Donziger shall produce  
2 to the pretrial services office all of his passports. To the  
3 extent that he wishes to undertake travel, he will make the  
4 application as any other defendant makes for permission to  
5 travel internationally or out of the Southern and Eastern  
6 Districts of New York.

7 The terms and conditions of release shall be fulfilled  
8 not later than this Friday, which is August 9.

9 I think there was one other.

10 Yes, ma'am.

11 MS. HARMON: Your Honor, we would also request  
12 pretrial supervision as well.

13 THE COURT: And pretrial supervision.

14 MS. HARMON: Thank you.

15 THE COURT: Yes, of course. Thank you.

16 Counsel, I think on the government's letter of  
17 yesterday, the government asked the court to remind  
18 Mr. Donziger of local criminal rule 2.3. That rule talks about  
19 disclosures with respect to criminal cases.

20 Mr. Donziger, I am going to hand down to you a copy of  
21 that rule and remind you that you are required to comply with  
22 it in all respects.

23 Is there any other disclosure with respect to the rule  
24 that the government is seeking here?

25 MS. GLAVIN: Your Honor, not at this point.

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1 I would note that with respect to that local rule  
2 23.1, it reads with respect to subsections A through E to apply  
3 to lawyers in the proceeding.

4 As of now, Mr. Donziger is his own lawyer, and the  
5 government would take the position that the public statements  
6 that he made last week run afoul of 23.1. When he gets a new  
7 lawyer in the case, we may ask to revisit this, to the extent  
8 he is then a party in the case, such that Mr. Donziger, if he  
9 wants to make extrajudicial comments that would be disseminated  
10 by means of public communication beyond simply a not guilty of  
11 the charges, we may be asking for further relief once he  
12 becomes a party with a lawyer.

13 THE COURT: Yes, ma'am.

14 Is there anything to do other than to set a new date?

15 MS. GLAVIN: Your Honor, in an abundance of caution,  
16 we would move to exclude the time under the Speedy Trial Act.

17 THE COURT: Indeed.

18 Let's find a date first and then we can do that.

19 THE DEPUTY CLERK: How is August 28 at 11:30?

20 THE COURT: Any objection to that?

21 MS. GLAVIN: No, your Honor.

22 THE COURT: Gentlemen?

23 MR. GOLTZER: No.

24 MR. DONZIGER: No.

25 THE COURT: Thank you.

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1 Ms. Glavin, with respect to the exclusion of time to  
2 August 28, is that right?

3 MS. GLAVIN: To August 28, your Honor, interest of  
4 justice.

5 THE COURT: In order to permit Mr. Donziger to retain  
6 counsel, time between today and August 28 is excluded from  
7 calculation under the Speedy Trial Act in the interest of  
8 justice. In so doing, I am not ruling with one way or the  
9 other as to whether the Speedy Trial Act applies or doesn't  
10 apply, but out of an excess of caution, I will exclude the  
11 time.

12 Anything else, Mr. Goltzer?

13 MR. GOLTZER: Thank you, Judge.

14 There is one modification that Mr. Donziger would  
15 request. With respect to securing the bond, he and his wife  
16 are the joint owners of the cooperative shares, and he will  
17 need to confer with a civil lawyer about how to effectuate  
18 using that apartment as security. I understand the equity is  
19 sufficient to do that, but it may not be able to be  
20 accomplished by Friday.

21 Would your Honor consider giving him a week?

22 THE COURT: With respect to?

23 MR. GOLTZER: Just that condition.

24 THE COURT: For just that condition, yes.

25 MR. GOLTZER: Thank you.

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1           So by Friday, he will arrange with the electronic  
2 monitoring, turn over the passport, and the remaining  
3 conditions.

4           Thank you so much. Thanks for hearing me, Judge.

5           THE COURT: Mr. Goltzer, thank you for your  
6 graciousness in appearing this morning as an advisory counsel.

7           MR. GOLTZER: Always a pleasure to see you, Judge.

8           As Stan Laurel said to Oliver Hardy, It's a fine mess  
9 you've gotten us into.

10          THE COURT: Good morning, Mr. Goltzer. Thank you.

11          Thank you, counsel. Good morning.

12          (Adjourned)